

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 09-50026-mg
	.	
MOTORS LIQUIDATION COMPANY,	.	Chapter 11
et al., f/k/a GENERAL	.	
MOTORS CORP., et al,	.	(Jointly administered)
	.	
Debtors.	.	
.	
MOTORS LIQUIDATION COMPANY	.	Adv. Proc. No. 09-00504-mg
AVOIDANCE ACTION TRUST, by and	.	
through the Wilmington Trust	.	
Company, solely in its capacity	.	
as Trust Administrator and	.	
Trustee,	.	
	.	
Plaintiff,	.	
v.	.	
	.	
JPMORGAN CHASE BANK, N.A.,	.	
individually and as	.	
Administrative Agent for	.	
Various lenders party to the	.	One Bowling Green
Term Loan Agreement described	.	New York, NY 10004
herein, et al.,	.	
	.	Wednesday, November 2, 2016
Defendants.	.	1:17 p.m.
.	

TRANSCRIPT OF TELEPHONE CONFERENCE, ON THE RECORD,
REGARDING DISCOVERY DISPUTE
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 1:17 p.m.)

2 THE COURT: All right. This is Judge Glenn. I'm on
3 the lectern in Motors Liquidation Company Avoidance Action
4 Trust v. JPMorgan Chase Bank, N.A., et al., Adversary
5 Proceeding Number 09-00504. I have a list of lawyers who are
6 appearing on CourtCall this hearing. It is entirely on
7 CourtCall.

8 Mr. Fisher, you requested the hearing. Is that
9 correct?

10 MR. FISHER: -- with the defendant (indiscernible).

11 THE COURT: You'll have to speak up because you're
12 not coming through clearly.

13 MR. FISHER: I'm sorry, Your Honor. Is this better?

14 THE COURT: Yes. Go ahead.

15 MR. FISHER: Jointly requested a conference with the
16 defendants (indiscernible) and I'm --

17 THE COURT: This is really not coming -- are you on
18 speaker?

19 MR. FISHER: I am, Your Honor.

20 THE COURT: You're going to need to pick up the phone
21 because it's almost impossible to hear you, and there is --
22 this is on the record, there is a transcript being made, so I
23 have to hear you clearly.

24 MR. FISHER: I apologize, Your Honor. If this is not
25 better, then I'm going to have to go to my office and dial back



1 in. Is that any better, Your Honor?

2 THE COURT: Hold on, let me check with the -- all
3 right, you're being picked up, but make sure you keep your
4 voice up when you talk.

5 Let me ask who else is appearing. I know there's a
6 reasonably long list of people, but, Mr. Fisher, which parties
7 does this discovery dispute involve?

8 MR. FISHER: It really involves all of the parties,
9 Your Honor.

10 THE COURT: Okay.

11 MR. FISHER: We had a -- so we --

12 THE COURT: All right. Let me do this then in light
13 of that. Let's go through and let me get the appearances. So,
14 Mr. Fisher, you're appearing on behalf of the trust.

15 Let's one at a time -- counsel should go through and
16 make your appearances on the record.

17 MR. WOLINSKY: Your Honor, this is Marc Wolinsky from
18 Wachtell Lipton for JPMorgan, and I'll be addressing one of the
19 two issues that are on the table for today.

20 THE COURT: Okay.

21 MR. DIPOMPEO: Your Honor, this is Christopher
22 DiPompeo of Jones Day. We represent a group of the term loan
23 lenders. I'll be addressing the appropriateness of a pencil
24 stay of discovery.

25 THE COURT: All right.



1 MR. DIPOMPEO: I believe my --

2 THE COURT: Thank you. I'm sorry, Mr. DiPompeo, I
3 have your appearance.

4 Okay. Who else?

5 MR. MACDONALD: Your Honor, this is Matt MacDonald
6 from Munger Tolles. I represent the same group of term lenders
7 that Mr. DiPompeo does.

8 THE COURT: All right.

9 MR. GLENN: Good afternoon, Judge. It's Andrew
10 Glenn, Kasowitz, Benson, Torres & Friedman on behalf of one of
11 the defendant groups.

12 THE COURT: Thank you.

13 MR. PANARELLA: This is Nicholas Panarella from
14 Kelley, Drye & Warren for JPMorgan Chase.

15 THE COURT: All right.

16 MR. POWER: Your Honor, this is Mark Power from Hahn
17 & Hessen. We have a separate group of approximately 80 term
18 lenders.

19 THE COURT: Anybody else?

20 All right. Mr. Fisher, go ahead.

21 MR. FISHER: Your Honor, the first issue is one of
22 enforcing the fact discovery cutoff in the case. We were last
23 in front of the Court on September 28th, and at that status
24 conference, we jointly proposed extending fact discovery until
25 October 31st, and the Court approved that extension. We have,



1 of course, taken many depositions leading up to the fact
2 discovery cutoff, and then before the cutoff, which was this
3 past Monday, there were four depositions that we had all agreed
4 could take place the week after the cutoff this week. So two
5 of those, two wild 30(b)(6) depositions occurred yesterday and
6 two are scheduled to occur tomorrow. Our view is that should
7 be it, that should be the end of discovery, but -- of fact
8 discovery.

9 But what has happened is since the cutoff, we're now
10 in discussions with the defendant about their desire to
11 schedule an additional seven fact depositions, and we oppose
12 any of these depositions going forward after the fact discovery
13 for a number of different reasons. For one thing, we all have
14 initial expert report deadlines on November 21st, and we don't
15 want to do anything that would jeopardize that next deadline or
16 jeopardize our ability to prepare our expert reports.

17 Just this past Monday, the defendant identified their
18 21st expert, and before that, they had -- since the status
19 conference, they had identified another. So there are two
20 additional experts they identified since September 28th. We
21 think that this is an attempt to go looking for fact discovery
22 to support these new experts, and it's just not a proper use or
23 a proper reason to have discovery spill over past the fact
24 discovery cutoff.

25 And a couple of weeks ago, we told the defendant that



1 with the deadline coming up, it's time for everyone to start
2 paring things down to meet the deadline, and we ourselves
3 voluntarily withdrew efforts to seek seven depositions that we
4 otherwise ourselves would have wanted to seek, but we didn't
5 because we recognized there was no realistic way to get that
6 done before October 31st. So we engaged in a kind of triage.
7 And so we just feel as though we've reached a point where we
8 need the Court to enforce on all the parties the deadline so
9 that we can all continue to move the case forward on the
10 schedule that the Court has laid out for us.

11 THE COURT: All right. Who wants to speak first for
12 defendants?

13 MR. WOLINSKY: Your Honor, this is Marc Wolinsky.
14 There's a lot of things that Mr. Fisher said that I disagree
15 with. You know, as you're going back to when we were in front
16 of Your Honor, there have been a number of discovery cutoffs
17 and a number of extensions in the cutoffs, and it's all been
18 driven by the same problem, obtaining cooperation from third
19 parties that no one controls, and actually that's a little bit
20 of an overstatement, but I'll come back to that.

21 Every witness, with one exception, that we're seeking
22 to get deposed has been on the table long before October 31st,
23 and the problem that we've had is obtaining the cooperation
24 from -- and the lawyers on the other side, they have clients,
25 they had issues, but we've had difficulty getting cooperation



1 from General Motors, Treasury, and the accounting firms that
2 worked on the valuation of GM's assets, and I can go through
3 each witness and explain the situation as to each, but frankly,
4 Your Honor, what we think is going on here is gamesmanship.
5 Every witness that we're seeking has been on the table, with
6 one exception, for months, and now the plaintiffs are saying
7 because you couldn't get a behind in a chair by October 31st,
8 it's too late.

9 Your Honor, the reason why I say this is gamesmanship
10 is because in light of Your Honor's ruling on -- we went out
11 and identified 12 experts on the assets that are involved in
12 this case. We retained them, we prepared them, and Your Honor
13 ruled that they should be deposed as fact witnesses, which was
14 -- you know, we understand the ruling. And over the past -- in
15 October, we scheduled and produced 12 fact witnesses, former GM
16 people, and if they had been in the position of having to work
17 through GM to find people -- to find witnesses at the level of
18 expertise that the 12 that we identified did, they would never,
19 never have been able to accomplish that discovery by October
20 31st.

21 So because of our industriousness and our
22 cooperation, they find themselves in the position of having
23 everything that they believe they need, and we find ourselves
24 in the position because General Motors itself has not been as
25 cooperative, because Pricewaterhouse hasn't been cooperative,



1 and KPMG hasn't been cooperative, we find ourselves in the
2 position that we need another week or two to complete these
3 additional depositions.

4 THE COURT: Mr. Wolinsky, did you serve subpoenas for
5 the depositions of these third parties?

6 MR. WOLINSKY: Let me go through each one. And I'll
7 start with, frankly, the one that we have the thinnest record
8 on. One witness is Jennifer Weigel at Visioneering, and she --
9 we have not served a -- we did not serve a subpoena for her
10 returnable before October 31st because we only located her
11 recently. We've been working with Visioneering for a long time
12 to try to find a witness.

13 But the reason why -- one of the reasons why I say
14 this is gamesmanship, if Your Honor looks at the plaintiff's
15 pretrial brief --

16 THE COURT: Can we -- Mr. Wolinsky, before you go on
17 with that, are all -- the total number of witnesses is how
18 many, seven?

19 MR. WOLINSKY: He says seven. I actually think it's
20 six because I think the seventh is a person in a category that
21 everyone agrees can go through to November 21st. There are
22 witnesses who are relevant to the constructive trust issue and
23 who are overlapping that I understood were going to slip over.
24 But my --

25 THE COURT: So who -- let's assume for this



1 discussion that it's six witnesses, and Ms. Weigel is one of
2 the six, did you serve the other five with subpoenas for their
3 depositions?

4 MR. WOLINSKY: We either served them as 30 -- these
5 are either witnesses that were 30(b)(6) and the 30(b)(6) failed
6 to come through with the information we expected or they were
7 subpoenaed in their individual capacity. So for KPMG, we
8 served a 30(b)(6) and a subpoena. One witness, the 30(b)(6)
9 witness turned out to be insufficient on one issue, so we
10 worked with KPMG to find an additional witness. And the second
11 KPMG witness, Eric Greenwald, was subpoenaed long before
12 October 31st and noticed before -- and subpoenaed to appear
13 before October 31st, and we've been working with KPMG, and the
14 best they can do is November 9th.

15 THE COURT: Well, when you say the best they can do,
16 subpoenas are enforceable. I don't know where they're located,
17 but you can either -- you know, you normally have to enforce it
18 in the district where the deposition's going to be unless the
19 court in that district, under the circumstances provided by the
20 rules, transfers the issue to this court, but you know, when I
21 set a discovery cutoff, I mean it. And my -- I didn't go back
22 to look at the case management order here, but I think every
23 case management order I enter provides that for any party
24 that's going to seek an extension, you need to do it at least
25 five days before the discovery cutoff occurs, okay.



1 I got the request for this hearing yesterday, I'm on
2 the phone today despite the fact that I have a long trial going
3 on, okay. So when an issue comes up, the Court resolves it
4 quickly. What I'm unsympathetic about is when, after a
5 discovery cutoff date occurs, when parties can't agree to
6 resolve it, coming to me and asking for relief from a discovery
7 cutoff date that I've established. So when you were all here
8 last time and I was told there were some difficulties
9 scheduling some third-party witnesses, I did provide a modest
10 extension to try and get those last depositions done.

11 You know, it's not -- and I'm not saying,
12 Mr. Wolinsky, that that's what you're describing to me, but
13 it's not a unilateral decision by a party that's subject to a
14 discovery cutoff to say, well, I can't voluntarily get the
15 witness to appear for a deposition before the discovery, but
16 you know, I can get him within a few weeks after. Sure, as to
17 -- and I think it was raised with me, there were a few
18 witnesses that, for scheduling reasons, were hard to get done
19 by the cutoff and where the parties agree and you'll say, fine,
20 you can do those. But that's the dilemma, Mr. Wolinsky. I
21 treat these discovery cutoff dates very seriously, and I don't
22 want to get into whether one side or the other thinks there's
23 gamesmanship going on. What I'm faced with is an issue of
24 whether to modify an order that I've previously entered that
25 required an application to extend the discovery dates at least



1 five days before the discovery cutoff occurs. So tell me why I
2 shouldn't enforce that here. Go ahead, Mr. Wolinsky.

3 MR. WOLINSKY: And, Your Honor, the reason why is
4 because we've been working cooperatively with the plaintiffs up
5 until yesterday, and not once up until the time we were working
6 cooperatively up until yesterday did they say, sorry, you're
7 too -- it's too late, five days has passed, and we're not going
8 to talk to you anymore. To the contrary, we consensually were
9 agreeing to schedule depositions for this week with them up
10 until the end of last week.

11 So I -- you know, I think there's an element of
12 fairness here and an element that we're getting hung up on our
13 effort to work consensually and cooperatively with the
14 plaintiffs to get the discovery done.

15 For example, Your Honor, let's focus specifically on
16 the Treasury deposition. The witness was subpoenaed long ago.
17 Treasury took the position that we should take a different
18 witness first, and if we were unsatisfied with that different
19 witness, we could seek -- we could get the witness that we
20 specifically had asked for, Mr. Malik. The plaintiffs are
21 agreeable to take the Treasury deposition of the individual
22 that Treasury has pushed us to take, Mr. Feldman. What the
23 plaintiffs are saying is if Mr. Feldman doesn't know -- have
24 the answers to the questions, we're stuck and
25 notwithstanding -- and we can't hold Treasury to its word that



1 it would produce a witness that would actually be
2 knowledgeable.

3 THE COURT: Well, you can hold them to it because
4 that's what subpoenas are about.

5 MR. WOLINSKY: Well, we can if you permit us, Your
6 Honor. That's really the core issue here. We all agree
7 that --

8 THE COURT: Well, you know, you're in a different
9 position if this issue had been raised with me before the
10 discovery cutoff, and I would say, try and work out a mutually
11 convenient date. If it's shortly after the discovery cutoff, I
12 consider extending it, but I'm hearing about all of this now
13 after the discovery cutoff. But let me --

14 MR. WOLINSKY: Now, Your Honor, and I don't mean to
15 be --

16 THE COURT: Hold on a second, Mr. Wolinsky.

17 MR. WOLINSKY: Sure.

18 THE COURT: So you said it's a total of six
19 witnesses, including Jennifer Weigel?

20 MR. WOLINSKY: Yes.

21 THE COURT: And Weigel is the only one who's not
22 under subpoena?

23 MR. WOLINSKY: She is not, but we did not issue the
24 subpoena until October 30 -- October 27th.

25 THE COURT: Okay. How long do you anticipate each of



1 these depositions taking?

2 MR. WOLINSKY: I think some are as short as 15 to 20
3 minutes. Ms. Weigel fits in that category. The others are an
4 hour -- all the others are less than half a day.

5 THE COURT: Tell me what's the issue on which you
6 wish to depose Ms. Weigel.

7 MR. WOLINSKY: Your Honor, Ms. Weigel is -- it's a
8 very interesting issue. There's a -- one federal court case in
9 Michigan applying Michigan law to the kind of asset that is
10 involved specifically in this case, a milling machine. She
11 works at a company called -- she worked at a company called
12 Visioneering. Visioneering had milling machines of exactly the
13 same type or essentially the same type as you'll find in any
14 General Motors factory. The Court in that case held that the
15 machine was a fixture.

16 The plaintiffs, in their pretrial brief, have said to
17 you when assessing intent, the key inquiry is whether an asset
18 has been moved or may be moved by the annexing party, and then
19 they specifically distinguished this case, this leading
20 Michigan case, Cincinnati Insurance, on the ground that there
21 was a lack of evidence that the machine was ever moved.

22 THE COURT: Tell me who the other five witnesses are.

23 MR. WOLINSKY: The other five -- do you want me to
24 finish what she's going to say or -- she's going to say the
25 machine has been moved. So you're going to have a fact witness



1 who will specifically establish that an asset of the type
2 involved in this case has been moved.

3 So the other witnesses, Your Honor, KPMG, two
4 witnesses, Jovan Cruz and Eric Greenwald. Mr. Cruz prepared a
5 single spreadsheet that we need -- we want to understand that
6 lays out the evolution of KPMG's valuation of New GM, and we
7 need to -- we want to depose him just to explain the one
8 spreadsheet. Mr. Greenwald from -- Mr. Greenwald of KPMG, we
9 would only pursue with him, depending on what we see in the
10 PricewaterhouseCoopers (indiscernible). Mr. Greenwald was the
11 senior engagement partner on the KPMG engagement. We have one
12 area of inquiry of him. Treasury, Mr. Malik. Mr. Malik was
13 the -- he was the numbers guy in the auto -- Treasury auto
14 industry task force. The Treasury has told us to take a
15 gentleman named Matt Feldman, who is a lawyer on the auto
16 industry task --

17 THE COURT: Oh, I know Mr. Feldman. You're talking
18 about at Willkie Farr?

19 MR. WOLINSKY: He's -- yes, we're working with
20 Willkie Farr.

21 THE COURT: Right.

22 MR. WOLINSKY: We've got Willkie Farr now, yeah. And
23 Mr. Feldman --

24 THE COURT: He was at Willkie Farr before, he's back
25 at Willkie Farr now.



1 MR. WOLINSKY: Treasury told us that Mr. Feldman
2 should be able to cover the universe, and -- but from the
3 documents, we believe Mr. Malik will be the better, more
4 knowledgeable witness, and our understanding with Treasury is
5 that if Mr. Feldman can do the job, great, we don't need Mr.
6 Malik. If Mr. Feldman can't do the job, we'd like to get Mr.
7 Malik, and they've told us Mr. Malik is not available until
8 November 16th.

9 THE COURT: When is Mr. Feldman -- did you agree on a
10 date for Mr. Feldman?

11 MR. WOLINSKY: Yes. We'll all -- we've all agreed
12 that we're going to proceed with Mr. Feldman tomorrow.

13 THE COURT: That's one of the two that's agreed?

14 MR. WOLINSKY: Yes. Yes.

15 THE COURT: All right. What's -- who's next?

16 MR. WOLINSKY: One witness from New GM. Actually, on
17 that subject, we originally had a 30(b)(6) witness to New GM
18 for six subject matters. We dropped six and then focused just
19 on one. I believe the witness going to be the chief economist
20 from New GM, and he's going to testify about the reasonableness
21 of the projections that we've prepared in connection with the
22 reorganization, which is an important issue in the valuation.
23 We've been pursuing that deposition for a very long time with
24 GM, and --

25 THE COURT: Have they indicated when he's available



1 for deposition?

2 MR. WOLINSKY: They have not pinned down a date yet.

3 THE COURT: Is he under subpoena?

4 MR. WOLINSKY: Yes.

5 THE COURT: Did you put a date in the subpoena?

6 MR. WOLINSKY: Yes, for -- the date of the subpoena
7 was for October 31st.

8 THE COURT: Who else?

9 MR. WOLINSKY: PricewaterhouseCoopers -- at the KPMG
10 deposition, we -- which took place at the end of September, we
11 learned for the first time that PricewaterhouseCoopers would --
12 had some involvement in the fresh-start accounting. Actually,
13 we didn't learn until when we were in front of you last time.
14 We were not aware about PricewaterhouseCoopers's involvement --

15 THE COURT: There a specific person from PwC who's
16 under subpoena?

17 MR. WOLINSKY: A 30(b)(6) witness under subpoena.
18 The return date for the subpoena was --

19 UNIDENTIFIED: Toward the end of October.

20 MR. WOLINSKY: I don't have the date, but it would
21 have been, yeah, end of October. And we've been working with
22 PricewaterhouseCoopers lawyers at Reed Smith to identify a
23 witness and get a date. We've been calling them every -- twice
24 a day to get their documents and to get a witness, and they've
25 told us that the documents would be produced this week.



1 THE COURT: So, you know, by my count, Weigel is
2 number one. There are two people at KPMG, one at Treasury, one
3 at New GM, and a 30(b)(6) at Pricewaterhouse, that's what
4 you're talking about?

5 MR. WOLINSKY: Yes, Your Honor.

6 THE COURT: Do any of the other defendants wish to be
7 heard?

8 MR. DIPOMPEO: Yes, Your Honor. This is Christopher
9 DiPompeo of Jones Day. We represent a group of term loan
10 lenders. I'm primarily going to speak about a different topic,
11 which is what to do about affirmative defenses that have
12 nothing to do with the represented assets trial.

13 THE COURT: I'm not dealing with that. I'm dealing
14 with a discovery dispute now. I'm not dealing with what you
15 think should be done with affirmative defenses. I've got a
16 trial that's supposed to resume in five minutes, so if you --
17 what is it that -- tell me what it is -- quickly what it is
18 your beef is about the affirmative defenses.

19 MR. DIPOMPEO: Sure. And this is, Your Honor, to be
20 clear, a discovery dispute over whether the affirmative
21 discovery -- fact discovery and the affirmative defenses should
22 also be subject to the October 31st deadline. As it was, very
23 briefly, Your Honor, the plaintiffs requested several weeks
24 ago, as you probably remember, to have defendant's specific
25 affirmative defenses put off until after the *(indiscernible



1 23:47) assets trial. We initially resisted that, but at the
2 status conference, Your Honor said that there was really no
3 rush on that, those weren't going to be dealt with during the
4 trial, and so they could be put off.

5 Defendant set up a list of those defendants' specific
6 affirmative defenses, which originally we had anticipated was
7 just going to be your conduit to potentially solving any of
8 those kind of issues, and what ended up coming back was a list
9 of 32 affirmative defenses, which are essentially all defenses
10 except constructive trust and your marking.

11 So then when the plaintiff asked to put a firm end
12 date to the discovery that's going on now, we think it doesn't
13 make sense to make that distinction because defendant-specific
14 affirmative defenses and other affirmative defenses, which are
15 also not going to be part of -- represented at trial. We
16 actually think that's fundamentally unfair.

17 THE COURT: All right. I'm not going to deal with
18 that issue today.

19 MR. DIPOMPEO: Okay.

20 THE COURT: Anybody else wish to be heard?

21 MR. MACDONALD: Your Honor, this is Matt McDonald
22 from Munger Tolles representing the same group of term lenders.
23 I just wanted to -- I definitely do not need the Court to
24 address this now. I just wanted to alert the Court that there
25 is a separate fact discovery cutoff for cross-claims and for



1 certain effectiveness issues.

2 THE COURT: Right.

3 MR. MACDONALD: I just want to make sure that nothing
4 today that happens today affects that deadline and to alert the
5 Court that the parties are currently negotiating a schedule
6 extension. I think we'll be able to resolve that amicably, and
7 we'll come back to the Court with a stipulation to that effect
8 that will move that deadline between --

9 THE COURT: Well, we'll see whether the Court agrees
10 to it, but we'll put that for another day.

11 Anybody else want to be heard?

12 MR. FISHER: Your Honor, it's Eric Fisher again.

13 THE COURT: Let me see whether any of the other
14 defendants want to be heard, Mr. Fisher, and then I'll give you
15 another chance.

16 MR. FISHER: Thank you.

17 THE COURT: Any of the other defendants' counsel wish
18 to be heard?

19 All right. Mr. Fisher, go ahead.

20 MR. WOLINSKY: Your Honor, it's Marc Wolinsky.

21 THE COURT: Go ahead, Mr. Wolinsky.

22 MR. WOLINSKY: I went back -- yeah, I just -- I don't
23 see anything in the case management order that provided -- that
24 has a provision along the lines you outlined. I'm not saying
25 it's not there. We haven't gone back and looked through every

1 single case management order, but frankly, we don't see it.

2 THE COURT: Okay. I haven't gone back to look back.
3 My standard case management order requires any party who wants
4 to seek an extension and they can't agree on -- actually, even
5 if they agree on, they have to seek an extension within, you
6 know, more than five days before, at least five days before the
7 time period runs out. Let me hear from Mr. Fisher.

8 MR. WOLINSKY: Or it could be an accident of history
9 because of how this case wound up in front of us.

10 THE COURT: Yeah, I know. I inherited it from Judge
11 Gerber, but I'm familiar with that. That's the trial -- one of
12 the trials that I have is another case I inherited from Judge
13 Gerber.

14 Mr. Fisher, let me hear from you.

15 MR. FISHER: I will be very brief because I do
16 appreciate that you're conducting a trial. Just to respond to
17 a few of the points -- specific points that Mr. Wolinsky made
18 about the specific witnesses. This Jennifer Weigel deposition
19 at Visioneering, a subpoena was issued on October 27th, two
20 business days before --

21 THE COURT: Yeah, I understand about Ms. Weigel.
22 They were very straightforward that a subpoena just got issued.
23 What about the other five?

24 MR. FISHER: New GM, we don't agree that they've been
25 uncooperative. We do think it takes a lot of time sometimes to



1 work with them, and we have been working with New GM since
2 August 2nd to coordinate deposition issues. We went out to
3 Detroit for New GM depositions. The defendants participated in
4 all of those discussions and made a decision, I suppose, at the
5 time that they didn't think they needed a witness because the
6 discussions that we had with New GM's counsel was always along
7 the lines of, once we're flying out to Detroit, let's make sure
8 that we get all the depositions done that need to get done, so
9 this is an issue that has cropped up belatedly. And the KPMG
10 and PwC witnesses, you know, it's not as though the defendants
11 are left without discovery, I mean, on these issues --

12 THE COURT: Let me stop you, Mr. Fisher.

13 Mr. Wolinsky, what district were the subpoenas issued
14 from?

15 MR. WOLINSKY: They were issued from the Southern
16 District, Your Honor.

17 THE COURT: You issued subpoenas from the Southern
18 District for witnesses in Michigan?

19 MR. WOLINSKY: Yes.

20 THE COURT: Good luck. You know, a subpoena has to
21 be issued in the district within 100 -- you know, the 100-mile
22 bulge rule applies in --

23 MR. WOLINSKY: Yeah.

24 THE COURT: You may be out of luck, but that's -- I'm
25 not going to decide that today.



1 MR. WOLINSKY: So, Your Honor, I -- the location of
2 the deposition was where the witness is located.

3 THE COURT: Yeah, but go read the rules.

4 MR. WOLINSKY: All right, Your Honor. I understand.

5 THE COURT: Here is what I'm going to say -- what I'm
6 going to -- I'm going to order, subject to the witnesses -- the
7 ability of the proposed deponents to seek to quash any subpoena
8 that's been served, I'm going to order that with respect to the
9 six depositions -- there may be -- as I understand it, Mr.
10 Wolinsky, it may be five because if you take Mr. Feldman's
11 deposition and you're satisfied, then Mr. Malik is not going to
12 be deposed. Is that correct?

13 MR. WOLINSKY: That's correct, Your Honor. And the
14 same actually is true of the KPMG witness. If we get what we
15 need from PricewaterhouseCoopers, we don't --

16 THE COURT: All right. So I'm going to order, on the
17 record, that the depositions -- the six depositions be
18 completed on or before 5 p.m. November 16th and that no
19 deposition shall exceed three hours in length unless both sides
20 agree to it. So I'm imposing the three-hour limit across the
21 board for each deposition, and if one deposition takes 15
22 minutes, you can't apply the time to another deposition, okay.

23 I hope their depositions are shorter than three
24 hours, but I'm going to permit depositions -- six depositions,
25 not to exceed three hours in length, to be completed on or



1 before 5 p.m., November 16th. And, of course, it's subject to
2 the ability of the deponents or their employers seeking to
3 quash the subpoenas, but inform them that that's the deadline.
4 And you said that for Mr. Malik, we may or may not need to
5 depose. You said he's available on November 16th, so that's
6 the last day that -- with the day you said he was available.

7 And with respect to other issues, I think it's time
8 for -- Mr. Fisher, confer with the defendants' counsel, liaison
9 committee, and speak with my courtroom deputy and arrange a
10 date for an in-court status conference in the adversary
11 proceeding. In advance of that conference, I'll accept letter
12 submissions addressing the issue of discovery with respect to
13 affirmative defenses in both. I want -- I guess, you've got to
14 confer about it, and if there's a disagreement, I want
15 simultaneous filings of letter submissions a week before the
16 status conference. Okay. That's going to be the Court's --
17 I'm so ordering the transcript with respect to the depositions,
18 and I'm not -- I'm going to make it crystal clear, I'm not
19 expending the fact discovery cutoff beyond the extension that
20 I've just granted, and it's only with respect to six
21 depositions. Understood?

22 MR. WOLINSKY: Marc Wolinsky. Yes, Your Honor.

23 THE COURT: All right. We're adjourned.

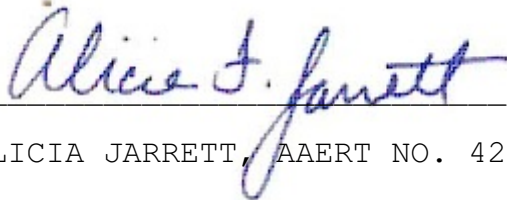
24 (Proceedings concluded at 1:49 p.m.)

25 * * * * *



C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.



ALICIA JARRETT, AAERT NO. 428

DATE: November 3, 2016

ACCESS TRANSCRIPTS, LLC

